



# CITY OF WHEATLAND

## CITY COUNCIL MEETING STAFF REPORT

March 28, 2023

**SUBJECT:** Acceptance and Notice of Completion for Portions of the Caliterra Ranch Village 1 Subdivision Improvements

**PREPARED BY:** Dane H. Schilling – City Engineer

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### **Recommendation**

Staff recommends that the City Council adopt Resolution No. 11-23 accepting a portion of the Caliterra Ranch Village 1 subdivision improvements as substantially complete, recognizing incomplete improvements and authorizing the City Clerk to file a Notice of Completion with the Yuba County Recorder (See Attachment 1).

### **Background/Discussion**

On March 27, 2018, the City of Wheatland and the Caliterra Ranch developer entered Subdivision Improvement Agreement concerning the Caliterra Ranch Subdivision, Village 1 ("SIA") which outlined the public improvements required to serve the subdivision (Attachment 3).

On October 23, 2018, the City and the developer entered into the First Amendment to the SIA (Attachment 4). And on September 24, 2019, the City and the developer entered into the Second Amendment to the SIA (Attachment 5).

In July of 2021, the current developer, K. Hovnanian Homes Northern California, Inc., (Developer) commenced construction of the subdivision improvements and work has progressed since that time. Final Inspections of the improvements were performed on March 9, 2023. Staff has determined that most of the work performed by the Developer is substantially complete and in conformance with the terms of the SIA with the following exceptions:

1. **Sewer Pump Station** – all components of the sewer pump are complete, tested and fully functioning. However, the Developer has had difficulty in bringing power to the pump station site. The pump station is currently connected to PG&E power via an overhead pole line and transformer. Permanent underground power to the pump station is expected by summer of 2023. The City will not accept the sewer pump station facility until the permanent power is connected to the site.
2. **Survey Monumentation** - construction of survey monuments in the streets of the subdivision is underway but has been delayed. Completion is expected by April 2023.

3. **Landscape Irrigation** – landscape plantings have been completed for several months. However, establishing PG&E power to the irrigation controller has been delayed. The Developer's contractor has been manually operating the irrigation system as needed to maintain the plantings. The Developer estimates having permanent power and performing the requisite 30-day testing period by mid-May 2023.
4. **Slurry Seal of Road Pavement** – Corrective work involving patch paving of certain areas required by the City and performed by the contractor has necessitated slurry sealing of the repaired areas. However, weather conditions have not afforded the proper temperature and moisture conditions required to apply the slurry seal to the pavement. It is expected that this work can be accomplished by May 2023.

The estimated value of these incomplete improvements is \$65,000. In accordance with the SIA, the Developer has paid for all construction inspections and administration costs associated with the project and has provided a warranty bond in the amount of \$545,817.00 as specified in the SIA, guaranteeing the work for a period of one year from date of the filing of the Notice of Completion (See Attachment 2).

By this action the streets, sewer collection system, storm drainage and water infrastructure improvements within the subdivision will be owned and maintained by the City. Accepting the project improvements as complete and authorizing the filing of a Notice of Completion provides the mechanism for Staff to book the improvements in the City's inventory of assets and establishes a 30-day statute of limitations in which liens, claims and stop notices may be filed against the project's Labor and Materials Bond. This recommended action is also consistent with the Subdivision Improvement Agreement.

The City will file a subsequent Notice of Completion when the remaining work is complete to the satisfaction of the City Engineer.

### **Alternatives**

Alternatively, if it were determined that the work described above was not completed to the City's satisfaction, the City Council may choose to postpone acceptance and the filing for the Notice to completion until all corrective work is performed.

### **Fiscal Impact**

The streets, sewer, storm drains and water infrastructure within this subdivision will be owned and maintained by the City. This subdivision is part of CFD 2015-1 that funds the maintenance of city infrastructure such as landscaping, parks, open space, street lighting, street maintenance, traffic signals, stormwater quality, and drainage facilities.

### **Attachments**

- Attachment 1: Resolution No. 11-23: Accepting Certain Caliterra Ranch Village 1 Subdivision Improvements
- Attachment 2: Notice of Completion for Caliterra Ranch Village 1 Public Improvements
- Attachment 3: Subdivision Improvement Agreement for Caliterra Ranch Village 1
- Attachment 4: Amendment 1 to Subdivision Improvement Agreement
- Attachment 5: Amendment 2 to Subdivision Improvement Agreement
- Attachment 6: Warranty Bond for Caliterra Ranch Village 1 Public Improvements

**RESOLUTION NO. 11-23**

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WHEATLAND ACCEPTING PORTIONS OF THE CALITERRA RANCH VILLAGE 1 SUBDIVISION IMPROVEMENTS AS SUBSTANTIALLY COMPLETE AND AUTHORIZING THE RECORDING OF THE NOTICE OF COMPLETION.**

**WHEREAS**, on March 27, 2018, City and Developer entered into that certain subdivision improvement agreement concerning the Caliterra Ranch (formerly Jones Ranch) Subdivision, Village 1, as amended ("SIA"); and

**WHEREAS**, a portion of the work contemplated in the SIA was deemed substantially complete by the City Engineer on March 9, 2023, in accordance with the SIA, and;

**WHEREAS**, the portions of the work contemplated in the SIA that are not completed are: the sewer pump station, the landscape irrigation system, survey monumentation and slurry sealing certain areas of pavement, all of which is valued at approximately \$65,000; and

**WHEREAS**, at its March 28, 2023, City Council meeting the City Engineer recommended to the City Council that it accept the portion of the work that the City Engineer has deemed substantially complete and a Notice of Completion be filed by the City for the substantially complete work.

**NOW, THEREFORE IT IS HEREBY RESOLVED, ORDERED AND FOUND** by the City Council of City of Wheatland, State of California,

1. The public improvements referenced in the SIA are hereby accepted as being complete in accordance with plans and specifications, except the following improvements: the sewer pump station, landscape irrigation system, survey monumentation and slurry sealing certain areas of pavement.
2. The City Clerk is directed to execute, serve, and record the Notice of Completion on said public improvements on behalf of the City of Wheatland.
3. This Resolution shall not affect those portions of the work contemplated in the SIA that are not completed as identified above. The Developer shall complete those portions of the work in compliance with the SIA and the City shall file a subsequent Notice of Completion when the remaining work is complete to the satisfaction of the City.

**PASSED AND ADOPTED** by the City Council of City of Wheatland, State of California  
this 28<sup>th</sup> day of March 2023, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

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Rick West, Mayor

ATTEST:

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Lisa Thomason, City Clerk

## ATTACHMENT 2

### RECORDING REQUESTED BY

City of Wheatland-Engineering Dept.

### AND WHEN RECORDED MAIL TO

Name: City of Wheatland

Address: P.O. Box 395

City & State: Wheatland, CA 95692

G.C. 6103

SPACE ABOVE FOR RECORDER'S USE

## Notice of Completion

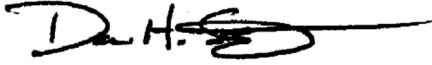
Notice is hereby given that:

1. The name and address of the owner of the real property described herein is the City of Wheatland, 111 C Street, Wheatland, CA 95692.
2. That the interest which the City of Wheatland owns the described real property is Fee Simple.
3. The construction works hereinafter described was completed on the 9th day of March 2023.
4. The work completed, in general, consists of street improvements, sewer collection system, storm drainage system and water infrastructure improvements except for the sewer pump station, survey monumentation, landscape irrigation system, and slurry sealing of pavement repair areas. That the name of the surety on the contractor's bond for payment on said contract is Lexon Insurance Company.
5. Said work being commonly known as: Caliterra Ranch Village 1 Subdivision Improvements (exceptions noted above).

The Contract Documents and Specifications for said work are on file at the City of Wheatland, 111 C Street, Wheatland, California 95692, Yuba County, California.

The prime contractor for said work: K. Hovnanian Homes Northern California, Inc. A California Corporation.

6. The location of said work, south of Wheatland Road is within the legal boundary of the City of Wheatland, Yuba County, California.

By:   
Dane H. Schilling, City Engineer

**Verification**

I am Jim Goodwin, the authorized agent of the City of Wheatland, the owner of the property described in the foregoing notice. I have read the foregoing notice and know the contents thereof, and the same of my own knowledge. I declare under penalty of perjury of the laws of the State of California that the foregoing is true and correct.

Dated: March 15, 2023, at Wheatland, California

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Jim Goodwin, City Manager

**CITY OF WHEATLAND  
SUBDIVISION IMPROVEMENT AGREEMENT  
Jones Ranch Subdivision, Village 1  
(now referred to as Caliterra Ranch Subdivision)**

This Agreement is made this 27<sup>th</sup> day of March, 2018, between the City of Wheatland, a general law city ("City"), and Dale Investments, LLC, a California limited liability company ("Developer"), who agree as follows:

**1. Recitals.** This Agreement is made with reference to the following background recitals:

1.1. On October 13, 2017, City approved a tentative subdivision map for the Jones Ranch Subdivision (now referred to as Caliterra Ranch Subdivision) for a subdivision development project in the City of Wheatland on an approximate 190.91-acres of real property in Wheatland (Yuba County APNs 015-180-074, and 015-180-079) (the "Subdivision"). Developer has presented to City a certain final map entitled *Caliterra Ranch - Village 1* of the Subdivision consisting of 55 single-family lots, 9 large lots for future development and 8 miscellaneous lots (the "Final Map" or "Subdivision Phase").

1.2. Upon review and recommendation of the City Engineer, City has determined that the Final Map substantially complies with the Subdivision Map Act, City subdivision ordinance and related ordinances, tentative map, and tentative map conditions of approval.

In developing the Subdivision Phase, Developer will prepare improvement plans for the public streets, utilities, improvements and facilities to be constructed and installed as part of the Subdivision Phase. Developer plans to install and construct the public streets, utilities, improvements and facilities as described in the City-approved Subdivision Phase improvement plans (the "Work") in compliance with the requirements contained in the *City of Wheatland Development Agreement Concerning Jones Ranch Subdivision* dated April 18, 2006, as amended by Amendment No. 1 dated September 11, 2008, Amendment No. 2 dated November 24, 2010, the *Third Amended and Restated City of Wheatland Development Agreement Concerning Jones Ranch Subdivision* recorded February 3, 2015, and Amendment No. 1 to the Third Amended and Restated Development Agreement concerning Caliterra Ranch, recorded on December 14, 2017, respectively (collectively, the "Development Agreement").

1.1. Developer has requested approval of the Final Map prior to the construction, installation and completion of the Work.

**2. Final Map Approval.** Subject to Developer's compliance with the terms of this Agreement, City approves the Final Map, accepts all offers of dedication made in connection with the Final Map, and consents to the recording of the Final Map.

**3. Payments for City Services.**

3.1. City has already incurred staff and consultant costs for engineering, administrative and legal services in connection with the review and approval of Work plans and specifications for the Work to be undertaken pursuant to this Agreement. City will present Developer with the invoices for all work that has been undertaken by its staff and consultants up through the effective date of this Agreement. City shall provide an accounting for its hours charged and costs incurred by City staff but is not required to provide invoices to Developer for City staff costs and expenses. For City consultants, City shall provide Developer with an electronic copy of the Consultants' invoices. Within ten (10) calendar days of receiving those invoices, Developer shall pay the full amount of such invoice, including a ten percent (10%) City processing fee that will be added to all consultant invoices. Developer shall have ten (10) calendar days after receipt of electronic copy of such invoices to notify the City in writing of any disputed amounts in

the Consultants' invoices, which will initiate the following dispute resolution process as to the disputed amount. Developer shall pay any undisputed amount of such invoices during the dispute resolution process. As to the amount in dispute, City and Developer shall meet and confer within five (5) calendar days thereafter to resolve any dispute. Such meetings may take place telephonically.

3.2. Upon issuance of a grading permit, Developer will advance to City an initial deposit in the amount of \$50,000 to fund the City engineering, administrative and legal services to be performed by City in connection with the inspection of construction, testing of improvements, and other costs incurred by City in the performance of its duties under this Agreement. City will draw on this deposit to pay or reimburse periodic invoices from the City consultants and to reimburse City for the cost of City staff time and materials. At no time will the deposit fall below twenty-five (25%) of the total Initial Deposit. If, before completion of the Work, the amount remaining in the deposit becomes depleted such that, after payment of all outstanding invoices, the deposit will be reduced to 25% of the Initial Deposit, City will require additional deposits to cover additional anticipated City costs. The Developer shall pay the City the amount of the additional deposit within ten (10) calendar days. No work will occur on any task under this Agreement until the City has received the required deposit from Developer. If any requested deposit or payment is not timely made, City may so notify Developer and it will have ten (10) calendar days to cure the default. If the deposit or payment remains unpaid at the end of the ten-day "cure" period, then City may terminate this Agreement. Landowner shall not be entitled to interest on deposits made hereunder. After payment of any outstanding invoices, City will refund to Developer any deposit remaining upon termination of the Agreement without interest. Any Developer deposit remaining upon completion and acceptance of the Work will be refunded without interest to Developer. If the final total City costs exceed the amount of the deposit(s), Developer must pay the difference upon demand and before the City accepts the Work. City shall establish a separate account for the purpose of accounting separately for this deposit and any future deposits and the charges against the deposits. City shall provide, within thirty (30) days of the end of any given month, a monthly accounting report to Developer of the prior month's expenditures paid by Developer and showing the services and costs funded under this provision. Developer and its employees, accountants, attorneys and agents may review, inspect, copy and audit these records, including all source documents.

**4. Plans and Specifications.** Developer designed and prepared detailed plans, specifications and drawings for the construction and installation of the Work, including landscape plans, and submitted them to City for review and approval by the City Engineer. The plans, specifications and drawings must comply with this Agreement, the Development Agreement, Subdivision Map Act, Final Map, tentative map, tentative map conditions of approval, City subdivision ordinance, and other applicable City ordinances and federal and state laws, regulations and codes, and City staff and consultants will review the Work plans and specifications to ensure that they meet all applicable standards and requirements. Developer shall not commence any portion of the Work until the City Engineer has approved the plans, specifications and drawings. The plans, specifications and drawings for the Work may be modified by Developer prior to or during the course of construction, provided that any such modification is first approved in writing by the City Engineer. During the course of construction, Developer or its contractor(s) shall keep accurate records on a set of improvement plans of all additions, deletions and changes to the Work not otherwise shown on the plans (known as "as built" or "record" drawings).

**5. Performance of Work by Developer.** Developer, at its sole cost and expense, shall furnish, construct and install the Work, furnish all necessary materials, and, where necessary, pay the cost of acquiring land or rights-of-way necessary for the construction and installation of the Work. Construction shall be in accordance with the City approved plans, specifications and drawings, this Agreement, the Development Agreement, Subdivision Map Act, Final Map, tentative map, tentative map conditions of approval, City subdivision ordinance, and other applicable city ordinances and federal and state laws, regulations and codes. Construction must be performed in a good and workmanlike manner and consistent with generally



accepted construction practices. All work and construction is subject to the satisfaction of the City public works inspector and City Engineer. Developer shall give City at least 48 hours advance notice of the commencement of construction of the Work and schedule a pre-construction meeting with its contractor(s) and the City Engineer at least 10-business days prior to commencement of construction of the Work. Any construction performed without notice to, and inspection by, City shall be subject to rejection. Prior to commencing construction of any portion of the Work, Developer or its contractor(s) must submit to City a written list of materials and supplies, in a form acceptable to City, showing the particular manufacturer and specifications of all materials and supplies proposed to be installed by Developer. The City will either disapprove with reasons or approve the list of materials or supplies. Only materials and supplies approved in advance by City may be installed on the Work.

**6. Licensed Contractor.** Developer's contractor(s) on the Work must be licensed pursuant to the California Business and Professions Code to do the Work, and the contractor(s) will be subject to City approval. City may request evidence that the contractor(s) has satisfactorily constructed other projects of like kind and magnitude or comparable difficulty. To the extent required by law, Developer and its contractor(s), and any contract entered into by Developer and its contractor(s), must comply with California Labor Code provisions concerning payment of prevailing wage rates, penalties, employment of apprentices, hours of work and overtime, keeping and retention of payroll records, and other requirements applicable to public works projects within the meaning of the Labor Code. (See California Labor Code division 2, part 7, chapter 1 (sections 1720-1861).)

**7. Improvement Security.** Within 30 days after the execution of this Agreement, Developer shall furnish City with the following improvement security:

7.1. Faithful performance bond, letter of credit or money deposit in the sum of 100% of the estimated cost of construction of the Work (as determined by the City Engineer), conditioned upon the faithful completion of the Work under this Agreement.

7.2. Payment bond, labor and materials bond, letter of credit or money deposit in the sum of 50% of the estimated cost of construction of the Work (as determined by the City Engineer), securing payment to the contractor(s), subcontractors, and persons furnishing labor, materials or equipment for the Work.

The type, form and issuer of the improvement security shall comply with chapter 5 of the Subdivision Map Act (Government Code sections 66499 through 66499.10) and shall be subject to City Attorney approval. No change, alteration, or addition to the terms of this Agreement or the plans and specifications accompanying the same shall in any manner affect the obligation of those providing improvement security pursuant to this Agreement. The City will not record the Final Map until after it receives improvement security in accordance with this section.

**8. Permits and Easements.** Developer, at its sole cost and expense, must obtain and comply with all federal, state and local permits, licenses, approvals, and entitlements, including but not limited to grading and encroachment permits, to do the Work. Developer must obtain all real property and permanent and temporary easements, of a width as determined by City, necessary for the Work and for ingress and egress to and from the Work for construction, installation, operation, maintenance, repair, removal, replacement and improvement prior to commencement of construction of the Work. Deeds and easements shall be in a form approved by City. Developer shall give all notices and comply with all federal, state and local statutes, laws, ordinances, rules and regulations that apply to the construction of the Work.

**9. Inspections.** City may during the course of construction inspect and test all or part of the construction or material being used in construction of the Work. Upon completion of construction of the Work, Developer shall notify City of the completion and request a final inspection of the Work. The completed

Work shall be inspected and tested to meet City requirements under this Agreement and the Development Agreement. No Work or portion of Work shall be accepted without meeting City inspection and testing requirements. The inspection and testing of the Work, or failure to inspect or test, shall not relieve Developer of its obligation to construct the Work in accordance with this Agreement. If all or any portion of the Work, or any materials or supplies used in connection with the Work, are found to be defective, substandard or nonconforming within one year after City's acceptance of the Work, then such Work shall be replaced, repaired, or otherwise remedied to the satisfaction of City. Developer shall cooperate with and assist City in performing inspection and testing of the Work. Developer must pay the costs of inspections and tests by City and the City Engineer. Developer also will be responsible for all costs incurred in the testing of the Work as needed or required by other governmental agencies having jurisdiction.

#### **10. Time for Performance; Termination.**

10.1. Developer shall commence construction of the Work within eighteen (18) months from the date of this Agreement and shall complete construction of the Work within two years from the date of commencement. Time is of the essence of this Agreement. Upon a showing of good cause by Developer, City may extend these deadlines in writing. However, the City may require modifications to previously approved plans, specifications and drawings for the Work if more than two years pass between the date of the approval and acceptance of the Work. Any extension granted by City may be done without notice to any of Developer's sureties, and the extension shall not relieve any surety's liability. The granting of any extension also may be conditioned by City by requiring acceptable new or amended improvement security pursuant to section 7. If construction of the Work has not been completed and accepted by City within these deadlines, and any extensions, City may terminate this Agreement at any time thereafter by giving thirty (30) days written notice of intent to terminate to Developer.

10.2. Developer may terminate this Agreement at any time prior to commencement of construction of any of the Work by giving written notice to City. After commencement of Work, Developer may terminate this Agreement only with the written consent of City, which consent may be given subject to reasonable conditions as necessary or appropriate to protect the public health, safety, aesthetics or welfare.

#### **11. Maintenance Guarantee.**

11.1. Developer unconditionally guarantees, for one year from the date of City's notice of acceptance of the Work, all Work constructed, installed and furnished under this Agreement. During the one year guarantee period, Developer at its sole cost and expense, will (a) correct, repair, replace or reconstruct to the satisfaction of City any and all Work, the construction, installation and/or materials of which may prove defective, nonconforming or improperly installed, ordinary wear and tear excepted, (b) maintain the plants and landscaping (i.e., water, weed, pest control, sprinkler repair, and dead/dying plant replacement) installed in landscaped medians and other public areas to the satisfaction of City, and (c) reimburse City for all costs associated with City's inspection, review and approval of the Work performed under subsections 11.1(a) and 11.1(b) above.

11.2. Prior to City's final acceptance of the Work, Developer will provide a maintenance bond, extension of the improvement security furnished under section 7.1, letter of credit, cash deposit, or other financial security satisfactory to City ("Maintenance Guarantee") in a sum equal to 10% of the final cost (as determined by the City Engineer) of the Work. The Maintenance Guarantee shall secure Developer's guarantee under section 11.1.

11.3. If Developer and/or its surety fail to comply with a guarantee obligation within a reasonable time, City may have the defect corrected, repaired, replaced or reconstructed as necessary. Developer and its surety under the Maintenance Guarantee shall be jointly and severally liable to City for such costs of correction, repair, replacement or reconstruction, including, but not limited to, administrative, engineering, legal and other costs incurred relating to the correction, repair, etc., and to the costs of collection. City shall bill Developer and its surety for such costs, which bill shall be due and payable within 30 days of its date. Interest shall accrue on any late payment at the rate of 10% per annum.

**12. Transfer of Property and Easements.** This section applies to any necessary transfers of real property interests not otherwise provided for by Final Map dedication. After City has finally inspected and approved the Work, and before City accepts the Work, Developer shall deliver conveyance documents satisfactory in form and content to City, transferring ownership of the completed Work to City, together with all real property, interests in real property, easements and rights-of-way that are necessary or appropriate in the opinion of City for the ownership and operation of the Work. Title to the Work and the interests in real property transferred shall be good, clear, and marketable title, free and clear of all encumbrances, liens or charges, except as may be approved by City. Developer shall obtain and pay any land transaction costs and costs of title insurance deemed necessary by City. City shall not accept the Work until the conveyance documents transferring the Work and real property interests have been accepted by the City Council.

**13. Notice of Acceptance.** City's final acceptance of the Work shall be evidenced by a written notice of acceptance from City to Developer. City shall provide the written notice of acceptance of the Work when City determines that all of the following conditions have been met to City's satisfaction:

13.1. The Work has been completed, and finally inspected, tested and approved by City;

13.2. All costs, charges and fees required by this Agreement, other City-Developer agreement, or City ordinance or resolution to be paid to City by Developer have been so paid in full;

13.3. Developer has submitted an acceptable Maintenance Guarantee;

13.4. The Work and all real property interests have been conveyed to, and accepted by City, in accordance with section 12; and

13.5. Developer has provided to City in satisfactory form and content the following items:

13.5.1 As built (also known as record) drawings of the completed Work, together with a copy of the contract documents used in the construction of the Work;

13.5.2 Accounting records of the amounts expended for the construction and installation of the Work, with values applicable to the various components of the Work;

13.5.3 Operating manuals, operating instructions, warranties and guarantees received by Developer or its contractor(s) in connection with the Work and any unit of Work or Work materials; and,

13.5.4 Computer disk with electronic file in AutoCAD and PDF formats (acceptable to the City Engineer) containing the Final Map and those portions of the approved improvement plans stored in electronic format.

**14. Ownership.** After final acceptance of the Work by City, the Work shall become the property of City on the date that the notice of acceptance of the Work is mailed or delivered to Developer (except that the

following portions of the Work will not be transferred to City and will remain the operation, maintenance, repair and replacement obligation of Developer and future property owners: the water delivery pipeline and improvements beyond (upstream from) the water meter; and, the sewer lateral from its connection at the sewer main to the building or structure being served). Upon such date, Developer shall be deemed to have conveyed and transferred all of its right, title and interest in and to the completed Work to City. Thereafter, City shall own and be free in every respect to operate, maintain, expand, and improve the Work, as it deems appropriate. City assumes no obligation as to operation and maintenance of the Work until such time as it gives notice of acceptance of the Work.

**15. Risk of Loss.** Until the date of the notice of acceptance of the Work, all risk of loss or injury, damage or destruction to the Work shall be upon Developer.

**16. Indemnification and Hold Harmless.** To the extent allowed by law, Developer shall indemnify, protect, defend, and hold harmless City and its officers, employees, engineers, volunteers and agents, from any and all claims, demands or charges and from any loss or liability, including all costs, expenses, attorney's fees, litigation costs, penalties, and other fees arising out of or in any way connected with performance or failure to perform under this Agreement by Developer or its officers, employees, contractors, subcontractors or agents, except such loss or damage that was caused by the sole negligence or willful misconduct of City. This indemnification shall survive and continue in full force and effect after termination of this Agreement for any reason with respect to any actions or omissions that occurred before the date of termination. The parties agree and acknowledge that Developer's obligation under this section extends to claims, lawsuits and liability of or against City resulting from the alleged failure to comply with any provision of California Labor Code division 2, part 7, chapter 1 (sections 1720-1861) in connection with the construction of the Work by Developer's contractor(s).

**17. Insurance.**

17.1. Developer or its contractor(s), at their sole cost and expense, shall procure and maintain for the duration of this Agreement the following types and limits of insurance:

Type	Limits	Scope
Commercial general liability	\$3,000,000/occurrence	at least as broad as ISO occurrence form CG 0001
Automobile liability	\$1,000,000/accident	at least as broad as ISO CA 0001 (code 1, any auto)
Pollution Liability	\$3,000,000/occurrence	At least as broad as ISO occurrence form CG 0039
Workers' compensation	statutory limits	
Employers' liability	\$2,000,000 per accident	

17.2. The general and automobile liability policy(ies) shall be endorsed (consistent with Insurance Code section 11580.04) to name City, its officers, employees, engineers, and agents as additional insureds regarding liability arising out of the Work. Developer/ contractor's coverage shall be primary and shall apply separately to each insurer subject to a claim or lawsuit, except with respect to the limits of the insurer's liability. City's insurance or self-insurance will be excess and shall not contribute with Developer/ contractor's insurance. Insurance shall be placed with insurers with a current A.M. Best's rating of A:-VII or better unless otherwise acceptable to City. The workers' compensation policy shall be endorsed to include a waiver of subrogation against City and its officers, employees, engineers, volunteers and agents.

17.3. Prior to commencing the Work, Developer shall provide to City the following proof of insurance: (a) certificate(s) of insurance on ACORD Form 25-S (or insurer's equivalent) evidencing the required insurance coverages; and (b) endorsement(s) on ISO Form CG 2010 (or insurer's equivalent), signed by a person authorized to bind coverage on behalf the insurer(s), certifying the additional insured coverages. The Developer shall also provide evidence of insurance for all contractors employed on the Work and the City shall be named as additional insured.

17.4. Prior to acceptance of the Work and throughout the duration of the maintenance guarantee as defined in Section 11, Developer shall provide to City the following proof of insurance: (a) certificate(s) of insurance on ACORD Form 25-S (or insurer's equivalent) evidencing the required insurance coverages; and (b) endorsement(s) on ISO Form CG 2037 (or insurer's equivalent), signed by a person authorized to bind coverage on behalf the insurer(s), certifying the additional insured coverages. The Developer shall also provide evidence of insurance for all contractors employed on the Work and the City shall be named as additional insured.

#### **18. Notice of Breach and Default.**

18.1. The following constitute a default under this agreement: (a) Developer refuses or fails to prosecute the Work with such diligence as will ensure its completion within the time specified, or any extension, and such refusal or failure is not cured within 30 days following written notice of such refusal or failure to Developer; (b) Developer fails to complete the Work within the time provided by this Agreement and any extension approved by the City; (c) Developer should be adjudged as bankrupt, Developer files for bankruptcy protection, or Developer makes a general assignment for the benefit of Developer's creditors; (d) a receiver is appointed in the event of Developer's insolvency; or (e) Developer or any of its contractors, subcontractors, agents or employees violate any of the provisions of this Agreement if such violation is not cured within 30 days following written notice of such violation to Developer and Developer's surety (provided, however, that it will not be deemed a default if Developer commences to cure the violation within the 30-day period and thereafter diligently prosecutes the cure to completion).

18.2. In the event Developer is in default of this Agreement beyond any applicable notice or cure period, Developer's surety, if any, shall have the duty to take over and complete the Work in accordance with the terms of this Agreement. If the surety within 15 days after notice of default from City does not give City written notice of its intention to take over the performance of the Agreement or does not commence performance within 15 days after notice to City of such election, then City may take over the Work and prosecute the same to completion by contract, or by any other method City may deem advisable, for the account and at the expense of Developer, and Developer and its surety shall be liable to City for any costs, expenses and damages incurred by City. In such event, City, without liability for so doing, may take possession of and utilize in completing the Work, such materials, appliances, plant or other property belonging to Developer as may be on the site of the Work.

18.3. If the form of security is other than a bond, then City, after giving notice of breach and default, may proceed to collect against the security in the manner provided by law and the terms of the security instrument.

**19. General Provisions.**

19.1. Entire Agreement. The parties intend this writing to be the sole, final, complete, exclusive and integrated expression and statement of the terms of their contract concerning the subject matter addressed in the Agreement. This Agreement supersedes all prior oral or written negotiations, representations, contracts or other documents that may be related to the subject matter of this Agreement, except those other documents that may be expressly referenced in this Agreement.

19.2. Construction and Interpretation. The parties agree and acknowledge that this Agreement has been arrived at through negotiation, and that each party has had a full and fair opportunity to revise the terms of this Agreement. Consequently, the normal rule of construction that any ambiguities are to be resolved against the drafting party will not apply in construing or interpreting this Agreement.

19.3. Waiver. The waiver at any time by any party of its rights with respect to a default or other matter arising in connection with this Agreement will not be deemed a waiver with respect to any subsequent default or matter.

19.4. Remedies Not Exclusive. The remedies provided in this Agreement are cumulative and not exclusive, and are in addition to any other remedies that may be provided by law or equity. A party's exercise of any remedy under this Agreement will not prejudice or affect the enforcement of any other remedy.

19.5. Severability. If any part of this Agreement is held to be void, invalid, illegal or unenforceable, then the remaining parts will continue in full force and effect and be fully binding, so long as the rights and obligations of the parties are not materially and adversely affected.

19.6. Personal Obligation; Successors and Assigns. Developer's obligations under this Agreement are personal obligations of Developer and they do not automatically "run with" the Subdivision property. Developer cannot assign its obligations under this Agreement to any transferee of all or any part of the property or any other third party without the express written consent of City, which consent will not be withheld unreasonably.

19.7. Amendment. This Agreement may be modified or amended only by a subsequent written agreement approved and executed by both parties.

19.8. Governing Law and Venue. Except as otherwise required by law, this Agreement will be interpreted, governed by, and construed under the laws of the State of California. The County of Yuba will be venue for any state court litigation and the Eastern District of California will be venue for any federal court litigation concerning the enforcement or construction of this Agreement.

19.9. Notices. Any notice, demand, invoice or other communication required or permitted to be given under this Agreement must be in writing and delivered either (a) in person, (b) by prepaid, first class U.S. mail, (c) by facsimile or electronic mail transmission with delivery to the other party confirmed by a successful-delivery confirmation receipt if the document also is sent within two days by prepaid, first class U.S. mail, or (d) by a nationally-recognized commercial overnight courier service that guarantees next day delivery and provides a receipt. Such notices, etc. shall be addressed as follows:

City:	Developer:
City Clerk	Mr. Sundee S. Dale
City of Wheatland	Dale Investments, LLC
	P.O. Box 272

111 C Street Wheatland, CA 95692	Yuba City, CA 95992
-------------------------------------	---------------------

Notice given as above will be deemed given (a) when delivered in person, (b) three days after deposited in prepaid, first class U.S. mail, (c) upon receipt of the facsimile machine or electronic mail successful-delivery confirmation, or (d) on the date of delivery as shown on the overnight courier service receipt. Any party may change its contact information by notifying the other party of the change in the manner provided above.

---

*SIGNATURES ON FOLLOWING PAGE*

CITY OF WHEATLAND

DEVELOPER

By:

  
City Manager

By: \_\_\_\_\_

Attest:

  
City Clerk

\_\_\_\_\_ [name]

\_\_\_\_\_ [title]



CITY OF WHEATLAND

DEVELOPER

By: \_\_\_\_\_  
City Manager

By:

*[Signature]*

Attest:

*Sarah P. Lee* [name]

\_\_\_\_\_  
City Clerk

*Mary J. [Signature]* [title]

CAPACITY CLAIMED BY SIGNER:

☐ Individual(s)  
☐ Corporate \_\_\_\_\_  
☐ Officer(s) \_\_\_\_\_  
☐ Partner(s)  
☐ Attorney-in-Fact  
☒ Other managing member

SIGNER IS REPRESENTING: NAME OF PERSON(S) OR ENTITY(IES)

Lucia 04-26-18

STATE OF CALIFORNIA,           )  
  )  
COUNTY OF YUBA               )           SS

On \_\_\_\_\_, 20\_\_\_\_, before me, a Notary Public in and for said State, personally appeared \_\_\_\_\_, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

\_\_\_\_\_  
NOTARY PUBLIC

See attached  
notarial acknowledgment  
MS

## CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of SutterOn April 26, 2018 before me, Morgan Scotten, Notary Public

Date

Here Insert Name and Title of the Officer

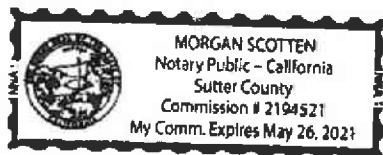
personally appeared Sundeeep S. Dale

Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Place Notary Seal and/or Stamp Above

Signature

Signature of Notary Public

## OPTIONAL

Completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

## Description of Attached Document

Title or Type of Document: Subdivision Improvement AgreementDocument Date: 3-27-2018Number of Pages: 10

Signer(s) Other Than Named Above: \_\_\_\_\_

## Capacity(ies) Claimed by Signer(s)

Signer's Name: \_\_\_\_\_

- ☐ Corporate Officer – Title(s): \_\_\_\_\_  
☐ Partner – ☐ Limited ☐ General  
☐ Individual ☐ Attorney in Fact  
☐ Trustee ☐ Guardian of Conservator  
☐ Other: \_\_\_\_\_

Signer is Representing: \_\_\_\_\_

Signer's Name: \_\_\_\_\_

- ☐ Corporate Officer – Title(s): \_\_\_\_\_  
☐ Partner – ☐ Limited ☐ General  
☐ Individual ☐ Attorney in Fact  
☐ Trustee ☐ Guardian of Conservator  
☐ Other: \_\_\_\_\_

Signer is Representing: \_\_\_\_\_

**CITY OF WHEATLAND  
FIRST AMENDMENT TO SUBDIVISION IMPROVEMENT AGREEMENT  
Caliterra Ranch Subdivision, Village 1(Lots 1 - 55)**

This Amendment is made this 23rd day of October, 2018, between the City of Wheatland, a general law city ("City"), and Dale Investments, LLC, a California limited liability company ("Developer"), who agree as follows:

**1. Recitals.** This Amendment is made with reference to the following background recitals:

1.1. On March 27, 2018, City and Developer entered into that certain City of Wheatland Subdivision Improvement Agreement ("Subdivision Improvement Agreement") concerning the Caliterra Ranch Subdivision. Defined terms in this Amendment have the same meaning as the defined terms in the Subdivision Improvement Agreement.

1.2. On May 31, 2018, City recorded the Final Map.

1.3. Section 7 of the Subdivision Improvement Agreement requires the Developer to furnish the City with improvement security for the Work.

1.4. The Developer has requested, and the City has agreed, that the City will accept a lien agreement recorded against the Developer's real property as improvement security for the Work until such time as the Developer, or its successor under Section 19.6 of the Subdivision Improvement Agreement, is prepared to commence the Work.

1.5. The City has found and determined it would not be in the public interest to require the installation of the Work sooner than two years after the recordation of the lien agreement.

**2. Amendments to Subdivision Improvement Agreement.**

2.1. Section 7 of the Subdivision Improvement Agreement is deleted and replaced with the following:

**7. Improvement Security.**

7.1. Within 30 days after the execution of this Agreement, Developer shall furnish City with the following improvement security:

7.1.1 Faithful performance bond, letter of credit or money deposit in the sum of 100% of the estimated cost of construction of the Work (as determined by the City Engineer), conditioned upon the faithful completion of the Work under this Agreement.

7.1.2 Payment bond, labor and materials bond, letter of credit or money deposit in the sum of 50% of the estimated cost of construction of the Work (as determined by the City Engineer), securing payment to the contractor(s), subcontractors, and persons furnishing labor, materials or equipment for the Work.

7.2. Notwithstanding Section 7.1, Developer and City may enter into a lien agreement in the form provided in Attachment A as improvement security. Developer agrees the lien agreement is a temporary improvement security until such time as the Developer is prepared to commence construction of the Work. Developer agrees to replace the lien agreement by furnishing City with an improvement security authorized by Section 7.1 prior to commencing construction of the Work. Upon receiving an improvement security from Developer authorized by Section 7.1, City will furnish to Developer and record a release of the lien agreement.

7.3. The type, form and issuer of the improvement security furnished under this Section 7 shall comply with chapter 5 of the Subdivision Map Act (Government Code sections 66499 through 66499.10) and shall be subject to City Attorney approval. No change, alteration, or addition to the terms of this Agreement or the plans and specifications accompanying the same shall in any manner affect the obligation of those providing improvement security pursuant to this Agreement.

2.2. Attachment A to this Amendment is added as Attachment A to the Subdivision Improvement Agreement.

2.3. Except as provided in this Section 2, there are no other changes to the Subdivision Improvement Agreement.

---

CITY OF WHEATLAND

DEVELOPER

By: \_\_\_\_\_

By: \_\_\_\_\_

Attest:

\_\_\_\_\_ [name]

\_\_\_\_\_  
City Clerk

\_\_\_\_\_ [title]

**Attachment A  
Form of Lien Agreement**

**WHEN RECORDED RETURN TO:**

City Clerk  
City of Wheatland  
101 C Street  
Wheatland, CA 95692

---

**LIEN AGREEMENT**

This Lien Agreement is made this 23rd day of October, 2018, between the City of Wheatland, a general law city ("City"), and Dale Investments, LLC, a California limited liability company ("Developer"), who agree as follows:

**1. Recitals.**

1.1. Developer has recorded a Final Map for the Caliterra Ranch – Village 1 subdivision, Tract No. 2017-0001 ("Final Map").

1.2. On March 27, 2018, City and Developer entered into that certain City of Wheatland Subdivision Improvement Agreement ("Subdivision Improvement Agreement"), as amended on October 23, 2018, requiring Developer to perform certain acts and construct certain improvements as a condition of City's approval of said Final Map.

1.3. Developer warrants it has not sold any of the individual lots in the real property to be divided, as identified on the Final Map.

1.4. Developer warrants it has not commenced to install or construct any of the improvements required by the Subdivision Improvement Agreement.

1.5. Developer has provided a title insurance policy and current title report from a title company approved by the City and issued within the 60 days prior to the execution of this Lien Agreement.

1.6. The Developer has requested, and the City has agreed, that the City will accept this Lien Agreement recorded against the Developer's real property as improvement security for the Work until such time as the Developer, or its successor under Section 19.6 of the Subdivision Improvement Agreement, is prepared to commence the Work.

**2. Developer's Performance and Obligations**

2.1. Developer grants to City a lien upon the property ("Property") described on the Final Map which is attached as Exhibit A, as security for the following obligations of Developer:

2.1.1 Construction of the improvements ("Improvements") specified in the Subdivision Improvement Agreement, in the estimated amounts and for the purposes specified in Exhibit B; provided, however, that Developer's obligations under this Lien Agreement shall extend to the actual cost of construction of the Improvements, notwithstanding that such costs may exceed the estimate set forth in Exhibit B.

2.1.2 This lien secures said obligation and the remedies provided herein for breach of said obligation.

2.2. For so long as title to the Property remains subject to the Lien Agreement, Developer shall not: (1) sell or permit the sale of any Village 1 individual lots (1 through 55) shown on the Final Map; or (2) commence work on any portion of the Improvements except as necessary to correct or prevent threats to the public health, safety or general welfare with the consent of the City. Notwithstanding the above, fee title to the entire property encumbered by this lien Agreement may be sold in the aggregate to a single purchaser, provided that the proposed purchaser, prior to assuming title to the property, executes a new lien agreement or provides acceptable alternative security acceptable to the City.

2.3. Prior to Developer obtaining a grading permit or commencement of construction of any portion of the Improvements required by the Subdivision Improvement Agreement, Developer shall substitute other form or forms of security satisfactory to City in place of this Lien Agreement.

2.4. Developer agrees that if suit is brought upon this Lien Agreement, all costs and reasonable expenses and fees incurred by the City in successfully enforcing Developer's obligations shall be paid by the Developer, including attorney fees, and that, upon entry of judgment, all such costs, expenses and fees shall be taxed as costs and included in any judgment rendered.

2.5. Developer agrees to indemnify, and hold harmless, the City, its officers, employees and agents from any liability whatsoever based or asserted upon any act or omission of Developer, its employees and agents relating to or in any way connected with the accomplishment of work, obligations, or performance of service under this Lien Agreement. As part of the foregoing indemnity, Developer agrees to protect and defend at its own expense, including attorney's fees, the City, its officers, employees and agents in any legal action based upon such alleged acts and omissions.

### **3. Effect of Lien Agreement.**

3.1. From the date of recordation of this Lien Agreement, a lien shall attach to the Property which shall have the priority of a judgment lien in an amount necessary to discharge all obligations contained in the Subdivision Improvement Agreement. Under no circumstances shall the City agree to subordinate the lien.

3.2. Developer shall have the right to convey or sell fee title to the entire property encumbered by this Lien Agreement and the applicable Subdivision Improvement Agreement, or any alternative security accepted by the City.



**4. Events of Default.**

Upon the occurrence of any one of the following events, Developer shall be deemed in default hereunder:

4.1. Failure by Owner to substitute other forms of security satisfactory to the City as prescribed by this Lien Agreement.

4.2. Commencement of any work on the Improvements by Developer, its agent or employees, prior to substitution of acceptable security with the City in place of this Lien Agreement except as specifically authorized by City to correct or prevent threats to the public health, safety or general welfare.

4.3. Filing of any proceedings or action by or against Developer to declare Developer bankrupt, or to appoint a receiver or trustee for Developer, or to reorganize Developer, or to make an assignment for the benefit of creditors, or to do anything else of a similar nature or purpose under any state or federal bankruptcy or insolvency laws, if such proceedings or actions are not discharged within sixty days.

4.4. Levy of any attachment or writ of execution against Developer and the Property whereby the Property is taken or occupied or attempted to be taken or occupied by someone other than Developer and such attachment or execution is not released within sixty days.

4.5. Sale of any Village 1 (Lots 1 through 55) lot shown on the Final Map prior to the release of the lien created by this lien Agreement, except as provided in Section 2.2.

4.6. Breach by Developer of any other term or condition of this Lien Agreement or of the Subdivision Improvement Agreement or Developer's failure to fully and faithfully discharge its obligations hereunder within the time specified herein.

All references to Developer in this section shall be deemed to include Developer's successors, assignees and transferees.

**5. City's Remedies.**

Upon the occurrence of any of the events described in Section 4, City may declare a breach of this Lien Agreement by giving thirty days' written notice to Developer, and may, at City's option, exercise any one or more of the following remedies:

5.1. Pursue any or all remedies provided in the Subdivision Improvement Agreement.

5.2. Enforce this lien by appropriate action in court or as provided by law and in the event the enforcement is by action in court, the Developer agrees that the amount of said lien shall include reasonable attorney fees which shall be taxed as a cost in any suit for such enforcement.

5.3. Estimate the cost of work required to complete the Improvements and foreclose said lien in said amount.

5.4. Initiate proceedings for reversion of the real property within the land division to acreage, at the expense of Developer, in accordance with the provisions of the Subdivision Map Act.

5.5. Pursue any other remedy, legal or equitable, for the foreclosure of a lien. Developer, its heirs and assigns shall pay reasonable attorney's fees to be taxed as cost in said proceedings.

**6. General Provisions.**

6.1. This Lien Agreement shall be recorded against Village 1 (Lots 1 through 55) by City with the County Recorder immediately following execution of this Lien Agreement indexed by (1) all parties hereto, and (2) all parties having any record title interest in the subject real property, pursuant to Government Code section 66436, acknowledging subordination of their interests to this Lien Agreement.

6.2. Entire Agreement. The parties intend this writing and the Subdivision Improvement Agreement, and any amendments thereto, to be the sole, final, complete, exclusive and integrated expression and statement of the terms of their contract concerning the subject matter addressed in the Lien Agreement. This Lien Agreement supersedes all prior oral or written negotiations, representations, contracts or other documents that may be related to the subject matter of this Lien Agreement, except those other documents that may be expressly referenced in this Lien Agreement.

6.3. Construction and Interpretation. The parties agree and acknowledge that this Lien Agreement has been arrived at through negotiation, and that each party has had a full and fair opportunity to revise the terms of this Lien Agreement. Consequently, the normal rule of construction that any ambiguities are to be resolved against the drafting party will not apply in construing or interpreting this Lien Agreement.

6.4. Waiver. The waiver at any time by any party of its rights with respect to a default or other matter arising in connection with this Lien Agreement will not be deemed a waiver with respect to any subsequent default or matter.

6.5. Remedies Not Exclusive. The remedies provided in this Lien Agreement are cumulative and not exclusive, and are in addition to any other remedies that may be provided by law or equity. A party's exercise of any remedy under this Lien Agreement will not prejudice or affect the enforcement of any other remedy.

6.6. Severability. If any part of this Lien Agreement is held to be void, invalid, illegal or unenforceable, then the remaining parts will continue in full force and effect and be fully binding, so long as the rights and obligations of the parties are not materially and adversely affected.

6.7. Personal Obligation; Successors and Assigns. Developer's obligations under this Lien Agreement are personal obligations of Developer and they do not automatically "run with" the Subdivision property. Developer cannot assign its obligations under this Lien Agreement to any transferee of all or any part of the property or any other third party

without the express written consent of City, which consent will not be withheld unreasonably.

6.8. Amendment. This Lien Agreement may be modified or amended only by a subsequent written Lien Agreement approved and executed by both parties.

6.9. Governing Law and Venue. Except as otherwise required by law, this Lien Agreement will be interpreted, governed by, and construed under the laws of the State of California. The County of Yuba will be venue for any state court litigation and the Eastern District of California will be venue for any federal court litigation concerning the enforcement or construction of this Lien Agreement.

6.10. Notices. Any notice, demand, invoice or other communication required or permitted to be given under this Lien Agreement must be in writing and delivered either (a) in person, (b) by prepaid, first class U.S. mail, (c) by facsimile or electronic mail transmission with delivery to the other party confirmed by a successful-delivery confirmation receipt if the document also is sent within two days by prepaid, first class U.S. mail, or (d) by a nationally-recognized commercial overnight courier service that guarantees next day delivery and provides a receipt. Such notices, etc. shall be addressed as follows:

City:	Developer:
City Clerk City of Wheatland 111 C Street Wheatland, CA 95692	Mr. Sundeep S. Dale Dale Investments, LLC P.O. Box 272 Yuba City, CA 95992

6.11. Notice given as above will be deemed given (a) when delivered in person, (b) three days after deposited in prepaid, first class U.S. mail, (c) upon receipt of the facsimile machine or electronic mail successful-delivery confirmation, or (d) on the date of delivery as shown on the overnight courier service receipt. Any party may change its contact information by notifying the other party of the change in the manner provided above.

CITY OF WHEATLAND

DEVELOPER

By: \_\_\_\_\_

By: \_\_\_\_\_

Attest:

\_\_\_\_\_ [name]

\_\_\_\_\_  
City Clerk

\_\_\_\_\_ [title]

[Signatures Must Be Notarized]

**CITY OF WHEATLAND  
SECOND AMENDMENT TO SUBDIVISION IMPROVEMENT AGREEMENT  
Jones Ranch Subdivision, Village 1**

This Amendment is made this \_\_\_\_ day of \_\_\_\_\_, 2019, between the City of Wheatland, a general law city ("City"), and Dale Investments, LLC, a California limited liability company ("Developer"), who agree as follows:

**1. Recitals.** This Amendment is made with reference to the following background recitals:

1.1. On March 27, 2018, City and Developer entered into that certain City of Wheatland Subdivision Improvement Agreement ("Subdivision Improvement Agreement") concerning the Caliterra Ranch Subdivision. Defined terms in this Amendment have the same meaning as the defined terms in the Subdivision Improvement Agreement.

1.2. On October 23, 2018, City and Developer entered into a First Amendment to the Subdivision Improvement Agreement.

1.3. The Developer has requested, and the City has agreed, to extend certain timelines provided in the Subdivision Improvement Agreement on the terms set forth in this Amendment.

**2. Amendments to Subdivision Improvement Agreement.**

2.1. Section 10.1 of the Subdivision Improvement Agreement is deleted and replaced with the following:

10.1 Developer shall commence construction of the Work no later than September 27, 2021 and shall complete construction of the Work no later than September 27, 2022. Time is of the essence of this Agreement. Upon a showing of good cause by Developer, City may, in its sole discretion, agree to extend these deadlines; no extension will be valid unless it is made in writing. However, the City may require modifications to previously approved plans, specifications and drawings for the Work if more than two years pass between the date of the approval and acceptance of the Work. Any extension granted by City may be done without notice to any of Developer's sureties, and the extension shall not relieve any surety's liability. The granting of any extension also may be conditioned by City by requiring acceptable new or amended improvement security pursuant to section 7. If construction of the Work has not been completed and accepted by City within these deadlines, and any extensions, City may terminate this Agreement at any time thereafter by giving thirty (30) days written notice of intent to terminate to Developer.

2.2. Except as provided in this Section 2, there are no other changes to the Subdivision Improvement Agreement, as amended.

CITY OF WHEATLAND

DEVELOPER

By: \_\_\_\_\_

By: 

Attest:

Sundeep S. Dole [name]

\_\_\_\_\_  
City Clerk

managing member [title]

**ATTACHMENT 6**Bond Number: LICX1214956Premium: \$7,641.00**PUBLIC/FRONTAGE IMPROVEMENT AGREEMENT  
GUARANTEE AND WARRANTY SECURITY**

**WHEREAS**, the City Council of the City of Wheatland, State of California, and **K. Hovnanian Homes Northern California, Inc., a California corporation**, ("Principal") have entered into an agreement by which Principal agrees to install and complete certain designated public improvements and to guarantee and warrant the work for a period of one year following its completion and acceptance, which said agreement identified as **Subdivision Improvement Agreement for Caliterra Village 1 and Amendment 1 and 2**, is hereby referred to and made a part hereof; and

**WHEREAS**, said Principal is required under the terms of said agreement to furnish a bond to guarantee and warrant the work for a period of one year following its completion and acceptance against any defective work or labor done, or defective materials furnished, and further to pay all City engineering fees and other City fees incurred during the warranty period, to comply with the terms of said agreement.

**NOW, THEREFORE**, we, the Principal and Lexon Insurance Company, admitted and duly authorized to transact business under the laws of the State of California as surety, are held and firmly bound unto the City of Wheatland as obligee ("City"), in the penal sum of **Five Hundred Forty-Five Thousand, Eight Hundred Seventeen and No/100 Dollars (\$545,817.00)** lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, successors, executors and administrators, jointly and severally, firmly by these presents.

The condition of this obligation is such that if the Principal, his or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, provisions in the said agreement and any alteration thereof made as therein provided, on his or its part to be kept and performed at the time and in the manner therein specified, and in all respects according to their true intent and meaning, and shall indemnify and save harmless City, its officers, agents and employees, as therein stipulated, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

As a part of the obligation secured hereby and in addition to the face amount specified therefor, there shall be included costs and reasonable expenses and fees, including reasonable attorney's fees, incurred by City in successfully enforcing such obligation, all to be taxed as costs and included in any judgment rendered.

The surety hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the agreement or to the work to be performed thereunder or the specifications accompanying the same shall in anywise affect its obligations of this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the agreement or to the work or to the specifications. The surety waives all rights of subrogation against the City or any person employed by the City.



**ATTACHMENT 6**Bond Number: LICX1214956Premium: \$7,641.00

**IN WITNESS WHEREOF**, this Public/Frontage Maintenance Bond Guarantee and Warranty Security has been duly executed by the Principal and surety above named, on this 27th day of December 2022.

Subdivider:

K. Hovnanian Homes Northern California, Inc., a California corporation

## Name of Surety

Lexon Insurance Company

12890 Lebanon Road, Mount Juliet, TN 37122

## Address of Surety

(615) 946-9052

## Telephone No. of Surety

  
Attorney-in-Fact D. Garcia

Contact: Robert Sprague

Phone: 916 945-5404

By: 

Timothy J. Collison  
Region Controller

**NOTE:** If Principal is a partnership, all partners should execute the bond.

**IMPORTANT:** Surety companies executing bonds must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in California.

**NOTICE:** The signature of the Surety on this bond must be acknowledged before a notary public, and this bond must be accompanied by evidence that the appointment as attorney in fact has been recorded in Yuba County.

**MANDATORY:** The Surety shall be authorized and licensed by the California Insurance Commissioner as an "admitted surety insurer."

**APPROVAL:** Bonds must be approved by City.

**REQUEST TO INSURER TO SUBMIT DOCUMENTS:** Execution of this document shall constitute the City's formal request to the insurer to provide the City with evidence of authorization as an admitted surety in the State of California from the California Department of Insurance and that the certificate of authority of the insurer has not been surrendered, revoked, canceled, annulled, or suspended.

**POWER OF ATTORNEY REQUIRED.** The Attorney-in-Fact (resident agent) who executes this bond on behalf of the surety company must attach a copy of his Power of Attorney as evidence of his authority. A notary shall acknowledge the power as of the date of the execution of the surety bond that it covers.

## ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of Placer )

On December 28<sup>th</sup>, 2022 before me, Stephanie Gonzalez, Notary Public  
(insert name and title of the officer)

personally appeared Timothy J. Collisen,  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are  
subscribed to the within instrument and acknowledged to me that he/she/they executed the same in  
his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the  
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing  
paragraph is true and correct.

WITNESS my hand and official seal.

Signature Stephanie Gonzalez (Seal)





CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

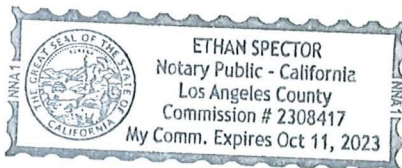
State of California

County of Los Angeles

On DEC 27 2022 before me, Ethan Spector, Notary Public, personally appeared D. Garcia who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledgment to me that he/she/they executed the same in ~~his/her/their~~ authorized capacity(ies), and that by ~~his/her/their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

Witness my hand and official seal.



Signature

A handwritten signature in blue ink, appearing to be 'E. Spector', written over a horizontal line.

Ethan Spector, Notary Public



# POWER OF ATTORNEY

2775

KNOW ALL BY THESE PRESENTS, that Endurance Assurance Corporation, a Delaware corporation, Endurance American Insurance Company, a Delaware corporation, Lexon Insurance Company, a Texas corporation, and/or Bond Safeguard Insurance Company, a South Dakota corporation, each, a "Company" and collectively, "Sompo International," do hereby constitute and appoint: Janina Monroe, Timothy Noonan, Adriana Valenzuela, Jennifer G. Ochs, Charles R. Teter III, Lisa Marie Saumur, Erin Brown, B. Aleman, KD Wapato, Marina Tapia, Edward C. Spector, Ethan Spector, Aidan Smock, Lisa Crail, Simone Gerhard, D. Garcia as true and lawful Attorney(s)-In-Fact to make, execute, seal, and deliver for, and on its behalf as surety or co-surety; bonds and undertakings given for any and all purposes, also to execute and deliver on its behalf as aforesaid renewals, extensions, agreements, waivers, consents or stipulations relating to such bonds or undertakings provided, however, that no single bond or undertaking so made, executed and delivered shall obligate the Company for any portion of the penal sum thereof in excess of the sum of **ONE HUNDRED MILLION Dollars (\$100,000,000.00)**.

Such bonds and undertakings for said purposes, when duly executed by said attorney(s)-in-fact, shall be binding upon the Company as fully and to the same extent as if signed by the President of the Company under its corporate seal attested by its Corporate Secretary.

This appointment is made under and by authority of certain resolutions adopted by the sole shareholder of each Company by unanimous written consent effective the 15<sup>th</sup> day of June, 2019, a copy of which appears below under the heading entitled "Certificate".

This Power of Attorney is signed and sealed by facsimile under and by authority of the following resolution adopted by the sole shareholder of each Company by unanimous written consent effective the 15<sup>th</sup> day of June, 2019 and said resolution has not since been revoked, amended or repealed:

RESOLVED, that the signature of an individual named above and the seal of the Company may be affixed to any such power of attorney or any certificate relating thereto by facsimile, and any such power of attorney or certificate bearing such facsimile signature or seal shall be valid and binding upon the Company in the future with respect to any bond or undertaking to which it is attached.

IN WITNESS WHEREOF, each Company has caused this instrument to be signed by the following officers, and its corporate seal to be affixed this 15<sup>th</sup> day of June, 2019.

Endurance Assurance Corporation

By: *Richard M Appel*  
Richard Appel, SVP & Senior Counsel



Endurance American Insurance Company

By: *Richard M Appel*  
Richard Appel, SVP & Senior Counsel



Lexon Insurance Company

By: *Richard M Appel*  
Richard Appel, SVP & Senior Counsel



Bond Safeguard Insurance Company

By: *Richard M Appel*  
Richard Appel, SVP & Senior Counsel



## ACKNOWLEDGEMENT

On this 15<sup>th</sup> day of June, 2019, before me, personally came the above signatories known to me, who being duly sworn, did depose and say that he/they is an officer of each of the Companies; and that he executed said instrument on behalf of each Company by authority of his office under the by-laws of each Company.

By: *Amy Taylor*  
Amy Taylor, Notary Public - My Commission Expires 5/9/23



## CERTIFICATE

I, the undersigned Officer of each Company, DO HEREBY CERTIFY that:

1. That the original power of attorney of which the foregoing is a copy was duly executed on behalf of each Company and has not since been revoked, amended or modified; that the undersigned has compared the foregoing copy thereof with the original power of attorney, and that the same is a true and correct copy of the original power of attorney and of the whole thereof;
2. The following are resolutions which were adopted by the sole shareholder of each Company by unanimous written consent effective June 15, 2019 and said resolutions have not since been revoked, amended or modified:

"RESOLVED, that each of the individuals named below is authorized to make, execute, seal and deliver for and on behalf of the Company any and all bonds, undertakings or obligations in surety or co-surety with others: RICHARD M. APPEL, BRIAN J. BEGGS, CHRISTOPHER DONELAN, SHARON L. SIMS, CHRISTOPHER L. SPARRO, MARIANNE L. WILBERT

; and be it further

RESOLVED, that each of the individuals named above is authorized to appoint attorneys-in-fact for the purpose of making, executing, sealing and delivering bonds, undertakings or obligations in surety or co-surety for and on behalf of the Company."

3. The undersigned further certifies that the above resolutions are true and correct copies of the resolutions as so recorded and of the whole thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal this 27th day of December, 2022.

By: *Daniel S. Lurie*  
Daniel S. Lurie, Secretary

## NOTICE: U. S. TREASURY DEPARTMENT'S OFFICE OF FOREIGN ASSETS CONTROL (OFAC)

No coverage is provided by this Notice nor can it be construed to replace any provisions of any surety bond or other surety coverage provided. This Notice provides information concerning possible impact on your surety coverage due to directives issued by OFAC. Please read this Notice carefully.

The Office of Foreign Assets Control (OFAC) administers and enforces sanctions policy, based on Presidential declarations of "national emergency". OFAC has identified and listed numerous foreign agents, front organizations, terrorists, terrorist organizations, and narcotics traffickers as "Specially Designated Nationals and Blocked Persons". This list can be located on the United States Treasury's website - <https://www.treasury.gov/resource-center/sanctions/SDN-List>.

In accordance with OFAC regulations, if it is determined that you or any other person or entity claiming the benefits of any coverage has violated U.S. sanctions law or is a Specially Designated National and Blocked Person, as identified by OFAC, any coverage will be considered a blocked or frozen contract and all provisions of any coverage provided are immediately subject to OFAC. When a surety bond or other form of surety coverage is considered to be such a blocked or frozen contract, no payments nor premium refunds may be made without authorization from OFAC. Other limitations on the premiums and payments may also apply.

Any reproductions are void.

Surety Claims Submission: [LexonClaimAdministration@sompo-intl.com](mailto:LexonClaimAdministration@sompo-intl.com)

Telephone: 615-553-9500 Mailing Address: Sompo International; 12890 Lebanon Road; Mount Juliet, TN 37122-2870